

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE UNITED STATES CAPITOL POLICE
AND
THE PRETRIAL SERVICES AGENCY FOR THE DISTRICT OF COLUMBIA
AND
THE OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF
COLUMBIA**

1. Purpose:

The United States Capitol Police (USCP), the Pretrial Services Agency for the District of Columbia (PSA), and the Office of the Attorney General for the District of Columbia (OAG), hereafter the "Party" or "Parties," hereby enter into this Memorandum of Understanding (MOU) for quality assurance review by PSA forensic toxicology laboratory personnel of the USCP Dräger breath alcohol instrument in support of USCP breath alcohol cases prosecuted in the District of Columbia by the OAG.

2. PSA Responsibilities:

- A. To the extent possible, PSA will provide the services of one or more of its forensic toxicologists (hereafter, "the designated PSA forensic toxicologist") to perform the duties and responsibilities indicated below. If staffing or other resource considerations prevent PSA from fulfilling its responsibilities under this MOU, it will provide appropriate notice as described in paragraph 6.D., below.
- B. The designated PSA forensic toxicologist will perform up to three (3) quality assurance reviews per year. These quality assurance reviews shall coincide with the certification of the instruments as required by the *Breath Test Admissibility in Criminal Proceedings Amendment Act of 2012*. During the quality assurance review, the designated PSA forensic toxicologist shall be present on site at the USCP Prisoner Processing facility to inspect all USCP Dräger Alcotest 9510 breath instruments and to review all data and/or documentation generated by the Dräger Alcotest 9510 breath instruments for the review period. PSA will not be responsible for the repair of any broken instruments.
- C. At the request of the OAG, the designated PSA forensic toxicologist will provide expert toxicology testimony in the District of Columbia concerning the quality assurance of the USCP forensic breath test program.
- D. PSA shall maintain all of the reports, audits, Memoranda for the Record (MFRs), or other documentation that its forensic toxicologists produce under this MOU and provide copies of all such documentation to the USCP point of contact.
- E. PSA shall protect any information to which it gains access regarding individual USCP cases in accordance with all statutes, rules, regulations, and procedures applicable to PSA.

- F. The designated PSA forensic toxicologist shall review and approve all training manuals, training policies, and standard operating procedures associated with the USCP forensic breath test program. The designated PSA forensic toxicologist shall review and approve any updates or amendments to the training manuals, training policies, and standard operating procedures.
- G. PSA shall provide OAG with all documentation associated with the quality assurance reviews of the USCP forensic breath test program. The Parties shall agree upon an appropriate designee or designees at OAG to receive this documentation.
- H. The designated PSA forensic toxicologist shall participate in the training of OAG Criminal Section attorneys regarding the USCP forensic breath test program and the Dräger Alcotest 9510 breath instruments. Such training will be repeated for all newly hired attorneys in the OAG's Criminal Section, or as needed.

3. USCP Responsibilities:

- A. The development and management of the USCP forensic breath test program shall be under the exclusive purview of USCP.
- B. USCP shall operate the USCP forensic breath test program pursuant to this MOU and in accordance with all other applicable local and federal statutes.
- C. USCP shall maintain the records of all chemical breath tests administered on the Dräger Alcotest 9510 breath instruments. These records shall be maintained in an accurate and efficient manner. At the request of OAG, these records shall be made available to assist in the prosecution of impaired driving cases in the District.
- D. USCP shall develop and maintain all training manuals, training policies, and standard operating procedures associated with the USCP forensic breath test program and provide them to the designated PSA forensic toxicologist for review and approval. Any updates or amendments to the training manuals, training policies, and standard operating procedures must be provided to the designated PSA forensic toxicologist within ten (10) business days of the revision.
- E. USCP shall supervise the training, certification, and recertification of all law enforcement personnel who operate the USCP Dräger Alcotest 9510 breath instruments for the purpose of evidential breath testing.
- F. USCP shall complete certifications of the USCP Dräger Alcotest 9510 breath instruments in accordance with applicable local and federal statutes and regulations. For purposes of this MOU, the certification of the Dräger Alcotest 9510 instrument requires that the instrument be tested by USCP within 180 days before the evidential breath test and found to be accurate.

- G. USCP shall assist in the training of the OAG Criminal Section attorneys regarding the USCP forensic breath test program and the Dräger Alcotest 9510 breath instruments. Such training will be repeated for all newly hired attorneys in the OAG's Criminal Section, or as needed. USCP shall also provide additional training as needed in order to reflect updates in standard operating procedures, software, or any other major changes or amendments to the USCP forensic breath test program.
- H. USCP shall provide the designated PSA forensic toxicologist with regular access to the USCP's Dräger Alcotest 9510 breath instruments and any associated documentation or other assistance requested by the designated PSA forensic toxicologist to carry out his/her responsibilities under this MOU.
- I. USCP shall maintain and handle any release to third parties of individual breath alcohol records under this MOU.
- J. USCP shall provide OAG with all documentation associated with the USCP forensic breath test program. The Parties shall agree upon an appropriate designee or designees at OAG to receive this documentation. All documentation designated below shall be delivered to OAG electronically. To the extent that any of the required documentation cannot be delivered electronically, USCP shall provide the required documentation to the designee(s) in hard copy within the designated timeframes. The documents which USCP shall provide the OAG include but are not limited to:

(1) The Dräger Alcotest 9510 breath logs (demonstrating all tests conducted on the instruments) on a monthly basis - these breath logs must be provided to OAG electronically within ten (10) business days after the end of the month. To the extent that the logs cannot be provided electronically, a hard copy shall be provided within ten (10) business days after the end of the month;

(2) The Dräger Alcotest 9510 student manual, training policies, and standard operating procedures - to the extent that these training materials and standard operating procedures are amended or updated, USCP shall provide a revised copy of these materials to the designee(s) within ten (10) business days of the revision;

(3) A complete list of all law enforcement personnel authorized to operate USCP's Dräger Alcotest 9510 instruments - this list should include the expiration date of each officer's certification and should be updated on a monthly basis. This documentation shall be provided to OAG within ten (10) business days of any additions or deletions from the authorized operator list;

(4) All documentation regarding the dry gas canisters utilized on the USCP's Dräger Alcotest 9510 instruments - such documentation shall include the dry gas Certificates of Analysis and any other documentation regarding the National Institute of Standards and Technology (NIST) traceability of the dry gas canisters utilized for evidentiary and certification purposes. USCP shall

provide OAG with updates when new gas canisters/lots are installed on the Dräger Alcotest 9510 instruments. USCP shall provide updated copies of the gas canister documentation when providing the monthly breath logs in accordance with section 3.J.(1), above;

(5) All documentation regarding any wet bath solution utilized on the USCP Dräger Alcotest 9510 instruments - such documentation shall include the wet bath/simulator solutions Certificates of Analysis and any other documentation regarding the NIST traceability of the wet bath/simulator solutions utilized for evidentiary and certification purposes. USCP shall provide OAG with updates when new wet bath solutions are installed on the Dräger Alcotest 9510 instruments. USCP shall provide updated copies of the wet bath/simulator solutions documentation when providing the monthly breath logs in accordance with section 3.J.(1), above;

(6) All documentation regarding the certification, as defined in section 3.F., above, of the USCP Dräger Alcotest 9510 instruments - these documents shall be forwarded to OAG no later than ten (10) business days after the completion of the certification procedures;

(7) All documentation regarding the maintenance or repair of the USCP Dräger Alcotest 9510 instruments to include, but not limited to, the repair and shipping form issued from the manufacturer, proof of certification by the manufacturer, and any Memorandums for Record (MFRs) completed as a result of the maintenance or repair;

(8) All breath tickets generated by the USCP Dräger Alcotest 9510 instruments and all internal thermal printer receipts and identical laser-printed receipts associated with any breath tests performed on the instruments;

(9) All General Orders, USCP Directives, or teletypes pertaining to the USCP forensic breath test program;

(10) All documentation associated with any software validation completed by USCP during the beta phase of the USCP Dräger Alcotest 9510 instruments;

(11) Any MFRs generated by USCP regarding the USCP Dräger Alcotest 9510 instruments and/or the USCP forensic breath alcohol program; and

(12) Any notes, USCP forms, and other documentation associated with a specific impaired driving arrest at the request of the prosecution.

K. At the request of OAG, USCP shall provide discovery documentation to assist in the preparation of impaired driving litigation. Requests for discovery documentation shall be sent electronically from OAG to an appropriate USCP designee. The Parties shall identify the appropriate USCP designee. The request shall include the defendant's

name, the Criminal Complaint Number (CCN), the date of the breath test, the serial number of the USCP Dräger Alcotest 9510 instrument used for testing in the specific case, and the subject test number. Within ten (10) business days of receipt of this request, USCP will electronically deliver a discovery packet to the requesting OAG attorney, which will include the following documentation:

- (1) All documentation regarding the certification data for the appropriate USCP Dräger Alcotest 9510 instrument for the time period when the breath test was administered;
- (2) The Certificate of Analysis for the dry gas standards used;
- (3) The Certificates of Analysis for the wet bath/simulator solutions used;
- (4) The training manual used for the Dräger Alcotest 9510 breath operator training session attended by the certified breath operator in the case; and
- (5) Any other documentation regarding the USCP forensic breath test program as requested by OAG.

4. OAG Responsibilities:

- A. OAG will provide PSA with the appropriate notification/subpoena for courtroom testimony in timely advance of any court date.
- B. OAG will provide USCP with the appropriate notification/subpoena for courtroom testimony in advance of any court date.
- C. OAG will communicate the need for OAG Criminal Section attorney training to USCP and PSA so that training for new attorneys may be scheduled.

5. Additional Provisions:

A. Effective Date

This MOU will become effective upon the date of the signature of the last of the principals representing each Party, and shall be evaluated every thirty (30) days for the first six (6) months from the effective date and on an annual basis thereafter to determine the need for amendment.

B. Full Agreement and Merger

The terms and conditions of this MOU constitute the full and complete agreement between the Parties. No other verbal or written agreement shall, in any way, vary or alter any provision of this MOU unless all Parties consent to vary or alter any provision of this MOU in a signed writing.

C. Modification and Duration

Modifications of this MOU shall be based upon the mutual agreement of the Parties and shall be made in writing as an addendum to this MOU. This MOU is effective for one (1) year.

D. Termination

Any Party may independently terminate this agreement upon written notice to the other Parties, in which case the termination shall be effective thirty (30) calendar days after the date of the notice.

E. Controlling Regulations and Laws

Each Party understands that the provisions of this MOU are subject to applicable laws and regulations of the United States and the District of Columbia.

F. Publicity and Media

Publicity releases and/or media interviews in connection with the activities covered by this MOU shall not be undertaken by any Party without prior review and consent by the other Parties' designated official responsible for public/media affairs.

G. Anti-Deficiency Act

Nothing contained herein shall be construed to obligate the Pretrial Services Agency, the United States Capital Police, or the Office of the Attorney General for the District of Columbia to any expenditure or obligation of funds in excess or in advance of appropriations, in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341; District Anti-Deficiency Act of 2002, D.C. Law 14-285, D.C. Official Code 47-355.02.

H. No Third-Party Beneficiary

This MOU shall not and is not intended to benefit or to grant any right or remedy to any person or entity that is not a Party to this MOU.

I. Dispute Resolution

The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this MOU promptly by negotiations between executives who have authority to settle the controversy.

J. Jointly Drafted

This MOU shall be deemed to have been drafted by all Parties and, in the event of a dispute, shall not be construed against any Party.


K. Notices

All notices shall be sent by the most expeditious means available, including but not limited to, facsimile, overnight courier, certified or registered mail to the addresses set forth below. Any such notice shall be deemed delivered when received.

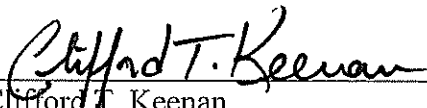
6. Points of Contact:

United States Capitol Police	Pretrial Services Agency for the District of Columbia
Sgt. Caline Roberts United States Capitol Police Patrol Mobile Response Unit / Alcohol Traffic Safety Unit 119 D Street, NE, Washington D.C. 20510 Office 202.593.3731 Cell 202.631.6506 caline.roberts@uscp.gov	Felix Adatsi, Director PSA Office of Forensic Toxicology Services 300 Indiana Avenue, N.W., Suite 6150 Washington, DC 20001 Office 202.585.7259 Cell 202.281.8428 felix.adatsi@psa.gov
Office of the Attorney General of the District of Columbia	
Andrew Fois Deputy Attorney General Public Safety Division Office of the Attorney General of the District of Columbia One Judiciary Square 441 Fourth Street, NW Suite 1060N Washington, D.C. 20001 202.727.4750 andrew.fois@dc.gov	
The USCP, PSA, and OAG agree to notify one another of any changes in this information	


8. Signature Approvals:

Approved by 
Kim C. Dine
Chief of Police
United States Capitol Police

Date: 8-26-13

Approved by 
Clifford T. Keenan
Director
Pretrial Services Agency for the District of Columbia

Date: 8/13/2013

Approved by 
Andrew Fois
Deputy Attorney General
Office of the Attorney General for the District of Columbia

Date: August 7, 2013